

CHAPTER 9:

# PROBATION VIOLATIONS

**Juvenile Probation Officer and Caseworker  
Self-Instructional Manual**

## JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

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#### Due Process Requirements

Probationers are entitled to certain due process protections because of the potential loss of liberty. *People v Pillar*, 233 Mich App 267, 269 (1998). The particular due process protections applicable to probation revocation proceedings were set forth in *Gagnon v Scarpelli*, 411 US 778 (1973):

- (a) written notice of the claimed violations of probation;
- (b) disclosure to the probationer of evidence against him;
- (c) opportunity to be heard in person and to present witnesses and documentary evidence;
- (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation);
- (e) a 'neutral and detached' hearing body . . . ; and
- (f) a written statement by the fact finder as to the evidence relied on and reasons for revoking probation.

#### INITIATING PROBATION VIOLATION PROCEEDINGS

MCR 3.944(A) sets forth the procedure for initiating probation violation proceedings. MCR 3.944(A)(1) states that the following options are available to initiate such proceedings:



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#### **Petition; Temporary Custody**

Submit a supplemental petition alleging that the juvenile has violated a condition of probation. Upon receipt, the court may:

- (a) direct that the juvenile be notified, pursuant to MCR 3.920, to appear for a hearing; or
- (b) order that the juvenile be apprehended and brought to the court for a detention hearing, as defined in MCR 8.110(D)(2).

#### **Issuance of Summons or Notice of Hearing**

A summons may be used to direct the juvenile to appear for a hearing on the alleged probation violation. If the juvenile is not in custody, at least seven days' notice must be given. A copy of the probation violation petition and notice of juvenile's rights must be provided. MCR 3.944(A)(1)(a); MCR 3.920(C)(1); MCR 3.921(A)(1).

#### **Issuing an Order to Apprehend a Juvenile and Conducting a Detention Hearing**

Instead of issuing a summons, the family division may issue an order to apprehend a juvenile and bring him or her before the court for a detention hearing. The order may only issue upon probable cause and must specify the juvenile and the place where the juvenile may be found. MCL 712A.2c states as follows: "The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who . . . has violated probation."



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## **Detention Hearings**

MCR 3.944(B) sets forth the required procedures at a detention hearing. These procedures are similar to those required for a preliminary hearing. MCR 3.944(B) states, in part, that at a detention hearing:

- (1) The court must determine whether a parent, guardian, or legal custodian has been notified and is present. If a parent, guardian, or legal custodian has been notified, but fails to appear, the detention hearing may be conducted without a parent, guardian, or legal custodian if a guardian ad litem or attorney appears with the juvenile;
- (2) The court must provide the juvenile with a copy of the petition alleging probation violation;
- (3) The court must read the petition to the juvenile, unless the attorney or the juvenile waives the reading;
- (4) The court must advise the juvenile of his or her rights, as provided in subrule (C)(1), and of the possible dispositions; and
- (5) The juvenile must be allowed an opportunity to deny or otherwise plead to the probation violation.

A juvenile may be detained without bond pending a probation violation hearing if the court finds probable cause to believe that the juvenile violated a condition of probation. MCR 3.944(B)(5)(b).



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**Advice of Rights in the Summons or at a Detention Hearing**

In a notice to appear for a probation violation hearing or at the detention hearing, the juvenile must be provided a copy of the supplemental petition and advised of his or her rights. MCR 3.944(A)(1)(a); MCR 3.944(B)(2); MCR 3.944(B)(4).

MCR 3.944(C)(1) list a juvenile's rights at a probation violation hearing. A juvenile has the right to:

- (a) be present at the hearing;
- (b) an attorney pursuant to MCR 3.915(A)(1);
- (c) have the petitioner prove the probation violation by a preponderance of the evidence;
- (d) have the court order any witnesses to appear at the hearing;
- (e) question witnesses against him or her;
- (f) remain silent and not have that silence used against the juvenile; and
- (g) testify at the hearing, if the juvenile wants to testify.



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**Contempt of Court for Parent/Guardian/Other Adult OR Juvenile at Least 17 years of Age**

In the event that a parent, guardian, or other adult or a juvenile who has attained the age of 17 fails to comply with the court's order, contempt proceedings may be initiated by a probation officer utilizing SCAO Form JC 40. This form should not be used for probation violations. Instead, it may be used in contempt proceedings in two situations:

- (1) When the probationer has already attained the age of 17 and you are seeking a sanction that may result in jailing the offender for up to 93 days; or
- (2) In situations where you are pursuing contempt charges against a parent, guardian, or other adult for their failure to comply with the court's order. See MCR 3.928.



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## **PLEA PROCEDURES**

### **Pleas of Admission or No Contest**

A juvenile may admit to the probation violation or plead no contest. However, before accepting the plea, the court must:

- (1) tell the juvenile the nature of the alleged probation violation;
- (2) tell the juvenile the possible dispositions;
- (3) tell the juvenile that if the plea is accepted the juvenile gives up the rights that he or she would have at a contested hearing;
- (4) confirm any plea agreement on the record;
- (5) ask the juvenile if any promises have been made beyond those in the plea agreement and whether anyone has threatened the juvenile;
- (6) establish support for a finding that the juvenile violated probation;
- (7) inquire of the parent, guardian, legal custodian, or guardian ad litem whether there is any reason why the court should not accept the juvenile's plea; or
- (8) determine that the plea is accurately, voluntarily, and understandingly made. MCR 3.944(D).

And, the court must specifically inform a probationer of their right to a hearing and the opportunity to contest the charges.



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#### **Procedures at Probation Violation Hearings**

A probation violation hearing is a dispositional hearing, not an adjudicative hearing.

#### **“Neutral and Detached Hearing Body,” Probation Officers, and Referees**

If a referee tries a case, that same referee may conduct a probation violation hearing even if the juvenile requests that a judge preside at such a hearing. MCR 3.913(B).

Many juvenile probation officers are also hearing referees. See MCL 712A.10(1), which allows a court to assign a juvenile probation officer or county agent as a referee. *The juvenile officer who submits a petition alleging a probation violation should not serve as fact finder at the hearing on the alleged violation.*

#### **Appearance of Prosecuting Attorney**

If the court requests, the prosecuting attorney must review the petition for legal sufficiency and appear at any delinquency proceeding. MCR 3.914(A); MCL 712A.17(4).

#### **Violation of Probation Based on Finding of Responsibility for an Offense**

A juvenile may be found to have violated probation based upon a prior finding of responsibility for an offense at a plea or trial. MCR 3.944(C)(3). It is not necessary to delay a probation revocation hearing because proceedings involving the underlying offense against the probationer are pending and involve the same conduct for which revocation is sought.





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#### **Limitations on Use of Evidence at Probation Revocation Proceedings**

A probationer cannot be compelled to testify against himself or herself at a probation revocation hearing and involuntary confessions are inadmissible as well. However, statements made to a probation officer (or caseworker) during an interview are admissible in probation revocation hearings or subsequent criminal proceedings, even absent Miranda warnings.

#### **Calling Additional Witnesses or Ordering Production of Additional Evidence**

The court has authority to call or examine witnesses and to order production of additional evidence or witnesses. MCR 3.923(A)(1).

#### **Juvenile may not Attack Underlying Order of Disposition at Probation Violation Proceeding**

In a juvenile delinquency case, the juvenile may not attack the underlying order of disposition at a probation revocation hearing, and appeals following revocation of probation are limited to matters related to the revocation hearing.



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#### DISPOSITIONS FOLLOWING A FINDING OF PROBATION VIOLATION

If the court finds a probation violation has occurred, the court may modify the existing probation order or order any other disposition under MCL 712A.18 or 712A.18a;

MCR 3.944(B)(5)(a); MCR 3.944(E)(1).

#### Supplemental Orders of Disposition

The court may amend or supplement a disposition order. In making subsequent dispositions, the court must consider imposing increasingly severe (graduated) sanctions, which may include ordering:

- additional conditions of probation;
- an extended term of probation;
- additional costs;
- out-of-home placement;
- a more restrictive placement;
- state wardship for a child who has not previously been a state ward; or
- any other conditions.

#### Recording Probation Violation Hearings

MCR 3.925(B) states that “[a] record of all hearings must be made.” Thus, detention hearings, plea hearings, and violation hearings must be recorded.

#### Recording Probation Violations Based on Underlying Offense

MCR 3.944(E)(2) provides that a finding of probation violation based upon the juvenile’s responsibility for an offense must be recorded as a probation violation only, not a finding of responsibility for the underlying offense.

